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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(OS) 2740/2014

ALKEM LABORATORIES LTD Plaintiff

Through: Mr. Sagar Chandra, Advocate

versus

EVANS BIOTEC & ORS Defendants

Through: Mr. Umesh Mishra, Advocate for D-1
and D-2.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

ORDER

% **24.08.2016**

I.A. 10208/2016 (by the plaintiff under Section 151 CPC)

1. The present application has been filed by the plaintiff stating *inter alia* that pursuant to the parties being referred to the Delhi High Court Mediation and Conciliation Centre, they have been able to arrive at a settlement as recorded in the Settlement Agreement dated 26.05.2016.

2. The Settlement Agreement dated 26.05.2016 is on record. The terms and conditions of the settlement arrived at between the parties have been set out in para 6 thereof, whereunder the defendants have acknowledged the statutory rights of the plaintiff in its trademark, "RACE", "RACE" family of marks, "RACE" logo and "RACE" trade dress and have undertaken not to use, manufacture, sell, offer for sale, advertise etc. any pharmaceutical preparation or any allied/cognate goods with the aforesaid trademark that may amount to infringement/dilution of the plaintiff's registered trademark. The remaining undertakings given by the defendants have been set out in

sub-paras (c) to (f) of para 6 of the Settlement Agreement. The defendants have also agreed to destroy all the material in their possession bearing the impugned trademark and undertaken that if they were found violating the terms and conditions of the settlement, then they shall pay a sum of Rs.5 lacs to the plaintiff as liquidated damages. The token costs of Rs.25,000/- has already been paid by the defendants to the plaintiff.

3. In consideration of the undertakings given by the defendants, the plaintiff has agreed to give up the claim of rendition of accounts and damages against the defendants. Accordingly, both the parties state that the present suit may be decreed in favour of the plaintiff and against the defendants in terms of the relief prayed for in para 19(i) to (iv) of the plaint as also the terms and conditions recorded in the Settlement Agreement.

4. The Court has perused the Settlement Agreement dated 26.5.2016. The same has been signed by the authorised representative of the plaintiff and the partner of the defendant No.1, defendant No.2 and director of the defendant No.3 as also their respective counsels and the learned Mediator.

5. As counsels for the parties jointly state that their clients have arrived at the aforesaid settlement of their own free will and volition and without any undue influence or coercion from any quarters, there appears no legal impediment in accepting the said settlement. The parties shall remain bound by the terms and conditions of the settlement recorded in the Settlement Agreement.

6. The suit is decreed in terms of the relief prayed for in para 19(i) to (iv) of the plaint as also in terms of the Settlement Agreement dated 26.05.2016, while leaving the parties to bear their own costs.

7. At this stage, learned counsel for the plaintiff states that in view of the fact that the parties have been able to arrive at a negotiated settlement through mediation, the plaintiff is entitled to claim refund of the court fees in terms of Section 16 of the Court Fees Act.
8. In view of the aforesaid submission made by the counsel for the plaintiff, the Registry is directed to issue a certificate in favour of the plaintiff for refund of the court fees, as per law.
9. The suit is disposed of alongwith the pending application.
10. File be consigned to the record room.
11. The date already fixed before the Joint Registrar, i.e., 26.08.2016 stands cancelled.

AUGUST 24, 2016
rkb/sk

HIMA KOHLI, J